

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
Form 7. Mediation Questionnaire**

*Instructions for this form: <http://www.ca9.uscourts.gov/forms/form07instructions.pdf>*

**9th Cir. Case Number(s)**

**Case Name**

**Counsel submitting this form**

**Represented party/ parties**

*Briefly describe the dispute that gave rise to this lawsuit.*

Defendants, whose Twitter platform boasts nearly 400 million users, permanently banned Plaintiff (and then-President) Trump from Twitter for engaging in constitutionally protected speech, in his official capacity, on a government account with millions of active participants. Defendants also censored and banned speech by the other named Plaintiffs and putative class members for their expression of views contrary to the government's preferred positions. As alleged in Plaintiffs' First Amended Complaint, Motion for Preliminary Injunction, the supporting exhibits and declarations, and the judicially noticeable materials admitted below, the federal government's entanglement with Defendants' "content moderation" program creates state action. State action exists by virtue of (1) government coercion, including directing Defendants and other social media platforms to target then-President Trump and his supporters; (2) substantial encouragement of Defendants' censorship by official exhortations coupled with threatened withdrawal of Section 230 immunity; and (3) joint action with the government to suppress disfavored speech. Defendants' conduct thus violates the First Amendment. Defendants' conduct also violates provisions of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201 et seq., and the Florida's Stop Social Media Censorship Act, Fla. Stat. §§ 501.2041.

*Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)*

*Briefly describe the result below and the main issues on appeal.*

The district court dismissed Plaintiffs' claims against Twitter and Dorsey with leave to amend, consistent with the Court's order. No further amended complaint was filed. The main issues on appeal include:

- Whether Appellants have adequately alleged state action by means of governmental compulsion of, joint action with, encouragement of, and/or entanglement with Appellees' challenged conduct, such that Appellees' conduct violates the First Amendment of the U.S. Constitution.
- Whether the district court correctly applied the choice of law provision in the contract between Appellants and Appellees.
- Whether Appellants have sufficiently alleged that Appellee's failure to disclose material information regarding their content moderation standards violates the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201 et seq.
- Whether Appellants have sufficiently alleged that Appellees' failure to disclose their content moderation standards violates Florida's Stop Social Media Censorship Act, Fla. Stat. §§ 501.2041.
- Whether Appellants have sufficiently alleged that Appellees' inconsistent application of their content moderation standards violates Florida's Stop Social Media Censorship Act, Fla. Stat. §§ 501.2041.

*Describe any proceedings remaining below or any related proceedings in other tribunals.*

There are no further proceedings pending in the District Court case.

**Signature** s/ Andrei D. Popovici

**Date** 7/1/2022

(use "s/[typed name]" to sign electronically-filed documents)